



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 13, 2011

CBCA 2021-RELO

In the Matter of DANNY RAY BAIZE

Danny Ray Baize, Marlton, NJ, Claimant.

Jasmine Kelsick, Human Resources Service Center, Department of the Navy, Naples, Italy, appearing for Department of the Navy.

GOODMAN, Board Judge.

Claimant, Danny Ray Baize, is a civilian employee of the Department of Defense. He was issued travel orders for a permanent change of station (PCS) from the United Kingdom to McGuire Air Force Base, Burlington, New Jersey. He asks this Board to review the agency's determination not to pay him temporary quarters subsistence allowance (TQSA) and not to extend his entitlement to fixed temporary quarters subsistence expense (TQSE) beyond the initial period of thirty days.¹

Factual Background

Claimant was issued travel orders for his PCS move that authorized reimbursement of TQSA and also reimbursement of TQSE at the fixed rate for thirty days. Pursuant to his authorization for TQSA, claimant sought to recover the costs of staying in a hotel in the United Kingdom before departing, from September 27 through October 9, 2009. As the

¹ Claimant filed his claim with the Board on May 24, 2010. The Board sent copies of the claim to the Navy, which issued his travel orders, and the Air Force, to which he was transferred. Neither agency filed a response to the claim. This decision is issued based upon the record as submitted by claimant.

result of difficulties in finding a residence in New Jersey, claimant also sought TQSE in addition to the thirty days authorized in the travel orders. The agency denied payment of TQSA, despite the authorization in claimant's travel orders, because he had been recruited and hired in the United Kingdom and not in the continental United States.²

Discussion

The statute dealing with quarters allowances provides in pertinent part:

(a) When Government owned or rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted when applicable:

(1) A temporary subsistence allowance for the reasonable cost of temporary quarters (including meals and laundry expenses) incurred by the employee and his family-

(B) for a period of not more than 30 days immediately before final departure from the post after the necessary evacuation of residence quarters.

5 U.S.C. § 5923 (2006).

If the employee was recruited outside the United States, at the duty station from which he is transferred, he is not entitled to TQSA except under limited circumstances. *Frank Lacks, Jr.*, CBCA 1785-RELO, 10-1 BCA ¶ 34,374. In his claim, claimant states that he was a "local hire," i.e., recruited in the United Kingdom. At the direction of the Board, he has subsequently submitted a detailed summary of his employment history in his previous positions. Based upon claimant's representations, his circumstances do not entitle him to TQSA. The authorization in his travel orders cannot create an entitlement that does not exist in statute or regulation.

When an agency, in the interest of the Government, transfers an employee from one permanent duty station to another, the agency may reimburse the employee for the subsistence expenses the employee incurs while occupying temporary quarters. 5 U.S.C.

² The claimant states: " TQSA . . . was disapproved even though it was granted on orders. This was based on me being a local hire. I can understand this ruling if final, and understand it was approved on orders as an administrative error."

§ 5724a(a)(3); 41 CFR pt. 302-6 (2009). If an agency decides to reimburse an employee for TQSE, it can give the employee the option of being reimbursed in accordance with either the fixed amount method or the actual expense method. The fixed amount method provides an employee with a fixed amount for up to thirty days, regardless of the employee's actual expenses. If TQSE is reimbursed according to the fixed amount method, the agency is prohibited from making any extensions to the TQSE period and the employee will receive no additional reimbursement if the fixed amount does not cover his TQSE. 41 CFR 302-6.200 to .202; *Joel Williams*, GSBICA 16437-RELO, 04-2 BCA ¶ 32,769; *Jeffrey D. Vance*, GSBICA 16016-RELO, 03-2 BCA ¶ 32,317.

Because claimant's travel orders authorized reimbursement under the fixed amount method, the thirty-day TQSE period granted by his agency may not be extended. Nor may claimant's travel orders be retroactively amended to allow reimbursement under the actual expense method. It is well-settled that an agency may not retroactively change a travel authorization from the fixed amount method to the actual expense method. *Joel Williams*; *Samuel E. Jones*, GSBICA 15770-RELO, 02-2 BCA ¶ 31,897.

Decision

Claimant is not entitled to TQSA or an extension of his previously-authorized TQSE. The claim is denied.

ALLAN H. GOODMAN
Board Judge